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Subject: AVIAN INFLUENZA LAWSUIT AGAINST USG: REQUEST FOR
LETTER TO COURT EXPLAINING SOVEREIGN IMMUNITY

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Central Intelligence Agency, China Hong Kong, Defense Intelligence
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SENSITIVE

SIPDIS

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OES/IHA, L, L/DL FOR DICKERSON
USAID FOR ANE/CLEMENTS AND GH/CARROLL
DEPT PASS TO HHS/WSTEIGER/ABHAT/MSTLOUIS AND HHS/NIH
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DOJ FOR OFL/HOLLIS
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SUBJECT: AVIAN INFLUENZA LAWSUIT AGAINST USG: REQUEST FOR
LETTER TO COURT EXPLAINING SOVEREIGN IMMUNITY

REF: JAKARTA 1656 AND PREVIOUS



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1. (U) This message is Sensitive but Unclassified. Please handle accordingly.

2. (U) This message requests Department's guidance by September 10. Please see para 8 for action request.

3. (SBU) SUMMARY: Legal proceedings are scheduled to begin in the Central Jakarta District Court on September 17 in the avian-influenza lawsuit against the USG and the World Health Organization (refs). A key contact at the Indonesian Department of Foreign Affairs (DEPLU) has asked Mission to submit a letter to the court explaining the concept of sovereign immunity, which he would send to the court with an opinion from DEPLU. Although he stated that a proceeding would likely still be necessary, he believed that the judges could dismiss the case on jurisdictional grounds, if given the legal basis to do so. Mission requests immediate authorization to draft this letter in conjunction with the Department of Justice (DOJ) and local counsel. END SUMMARY.

DEPLU RECOMMENDS COURSE OF ACTION

4. (SBU) On August 13, Mission sent a Diplomatic Note to the Indonesian Department of Foreign Affairs (DEPLU) asserting sovereign immunity, as instructed by Washington (reftel). On September 2, DCM, Poloff and DOJ Resident Legal Advisor (RLA) met with Arif Havas Oegroseno, Director of DEPLU's Office of Political, Legal and Regional Treaties. During that meeting, Oegroseno stated he would have an informal conversation with the court about the case.

5. (SBU) On September 5, DCM, Poloff and DOJ Resident Legal Advisor (RLA) met with Arif Havas Oegroseno again at his request. Oegroseno stated he had discussed the case with the court and, based on his conversation with the court, recommended Mission prepare a letter, addressed to the court, explaining the basis for sovereign immunity in international law, and requesting the case be dismissed on the grounds of lack of jurisdiction. Oegroseno asked that the letter be sent to DEPLU under cover of a diplomatic note. He explained that he would then submit our letter with a legal opinion from DEPLU to the court. He clarified that the letter should only discuss jurisdiction to adjudicate the case and not touch on the merits of the case.

6. (SBU) Mission asked whether the World Health Organization (WHO) should submit a similar letter to the court through DEPLU. Oegroseno stated that he could offer no opinion on the best course of action with the WHO because he had not spoken to any WHO representatives or received their assertion



of immunity.

DEPLU OFFERS POSTPONEMENT OF THE TRIAL

7. (SBU) At the September 5 meeting, Oegroseno said the court could consider postponing the date of the proceeding by three months. Oegroseno agreed that the current U.S.,

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Indonesia, and Australia conversations regarding sample sharing were important and noted the postponement could give interlocutors additional time to discuss sample sharing without the potential disruption caused by the civil suit.

ACTION REQUEST

8. (SBU) Mission requests immediate authorization to draft the requested letter, in conjunction with the Department of Justice (DOJ) and local counsel. Mission requests the Department's guidance, before September 10, as to which specific points to make in the requested letter regarding jurisdiction and the USG claim of sovereign immunity.

HUME

